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**Federal Communications Commission**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACS Wireless, Inc.	)	File No.: EB-FIELDWR-15-00019085
	)	
Owner of Antenna Structure #1204036	)	NOV No.: V201532780006
Eagle River, Alaska	)	
	)	

**NOTICE OF VIOLATION**

**Released: May 28, 2015**

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules),<sup>1</sup> to ACS Wireless, Inc., (ACSW), in Anchorage, Alaska, owner of Antenna Structure #1204036, located in Eagle River, Alaska. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.<sup>2</sup>

2. On April 28, 2015, in response to a complaint that the top flashing beacon of Antenna Structure #1204036 had been out since at least April 24, 2015, an agent from the Enforcement Bureau's Anchorage Office, attempted to contact ACSW via email at approximately 3:15 p.m. Receiving no response, the agent researched, but could not locate, Notices to Airmen (NOTAMs) for either the antenna structure location or any affected air space/airports in the area. Later that evening, the agent observed the antenna structure while in Eagle River at approximately 10:10 p.m., 10:20 p.m., and 10:30 p.m., and verified that the top beacon was not operational.<sup>3</sup> At approximately 10:40 p.m., the agent telephoned the Federal Aviation Administration's (FAA's) Kenai Flight Service Station (FSS) and notified the FSS of the light outage on Antenna Structure #1204036.

3. On April 29, 2015, at approximately 7:45 a.m., the agent placed a phone call to ACSW. Later that morning, ACSW called the agent stating that the antenna structure's lighting was monitored and alarmed and that ACSW was in the process of verifying the systems in place and would get back with the agent with their findings. On May 1, 2015, ACSW contacted the Anchorage agent stating that the monitoring/alarm system had failed at the structure, that the top beacon was out, and that replacement of the top beacon and repairs of the monitoring/alarm system were underway. Therefore, the following violations:

- a. 47 C.F.R. § 17.23: "Unless otherwise specified by the Commission, each new or altered antenna structure must conform to the FAA's painting and lighting

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

<sup>3</sup> Sunset for Anchorage was at approximately 9:53 PM (2153 Hours) on April 28, 2015.

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specifications set forth in the FAA's final determination of "no hazard" and the associated FAA study for that particular structure. For purposes of this part, any specifications, standards, and general requirements set forth by the FAA in the structure's determination of "no hazard" and the associated FAA study are mandatory. Additionally, each antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure's registration, or in accordance with any other specifications provided by the Commission." Antenna Structure #1204036 requires painting and lighting requirements in accordance with FAA Chapters 4 and 5, of FAA Circular Number 70/7460-1J. Chapter 5 requires at the top of the structure at least one red flashing (L864) beacon. At the time of the investigation, the required lighting was not observed on Antenna Structure #1204036.

- b. 47 C.F.R. § Section 17.48(a): "The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes." At the time of the investigation, no NOTAM was issued for Antenna Structure #1204036 by ACSW.

4. Pursuant to Section 403 of the Communications Act of 1934, as amended,<sup>4</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, ACSW must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>5</sup>

5. In accordance with Section 1.16 of the Rules, we direct ACSW to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of ACSW with personal knowledge of the representations provided in its response, verifying the truth and accuracy of the information therein,<sup>6</sup> and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is

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<sup>4</sup> 47 U.S.C. § 403.

<sup>5</sup> 47 C.F.R. § 1.89(c).

<sup>6</sup> Section 1.16 of the Rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 C.F.R. § 1.16.

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punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>7</sup>

6. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission  
Anchorage Office  
P.O. Box 231949  
Anchorage, AK 99523-1949

7. This Notice shall be sent to ACS Wireless, Inc., at its address of record.

8. The Privacy Act of 1974<sup>8</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David Charlton  
Resident Agent  
Anchorage Office  
Western Region  
Enforcement Bureau

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<sup>7</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

<sup>8</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).